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July 10, 2008

VIA E-FILE

The Honorable Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re Common Carrier Obligation Of Railroads—Transportation Of Hazardous Materials
STB Ex Parte No. 677 (Sub-No. 1)

Dear Secretary Quinlan:

Enclosed on behalf of The Kansas City Southern Railway Company ("KCSR") are written comments concerning the above-captioned matter

Sincerely,

David C. Reeves
Associate General Counsel
The Kansas City Southern Railway Company

Enclosure

222838

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**EX PARTE NO. 677
(SUB-NO. 1)**

**COMMON CARRIER OBLIGATION OF RAILROADS—
TRANSPORTATION OF HAZARDOUS MATERIALS**

**COMMENTS OF
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

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The Kansas City Southern Railway Company ("KCSR") hereby submits its individual comments with respect to the subject of the above-captioned Surface Transportation Board ("STB" or "Board") proceeding. KCSR is a party to and joins in the comments being filed in this matter by the Association of American Railroads ("AAR"), and therefore submits only brief individual comments. KCSR appreciates the opportunity to share its perspective on this important issue. KCSR has always striven to meet its obligation to provide service to shippers upon reasonable request. However, what requests are reasonable is especially complicated by the various issues surrounding the transportation of hazardous materials, particularly materials classified as toxic by inhalation ("TIH").

COMMENT

**WITHOUT LIABILITY LIMITS, RAILROADS SHOULD NOT BE REQUIRED
TO TRANSPORT HAZARDOUS MATERIALS**

Despite the rail industry's outstanding safety record in moving TIH materials, the risk of even one accident related to TIH materials is potentially devastating, especially for

smaller carriers¹ Yet, despite this risk, carriers generally view their service obligations as requiring them to carry such TIH materials, whether they want to or not.

If a carrier attempts to account for this risk through the rates quoted to a TIH shipper, it is potentially subject to a rate complaint due to the high level of rates needed to fully account for the shipment's costs. This is a problem because the Board's rules for simplified stand-alone costs cases and three benchmark cases do not provide a carrier with an adequate opportunity to recover the fully-allocated costs of transporting such TIH materials. A rail carrier thus can be stuck carrying TIH materials at rates that are not fully compensatory, particularly in light of the extreme risk of a release of such chemicals. The simple fact of the matter is that the revenue generated by transporting

¹ KCSR discloses this risk in Kansas City Southern's 10-K annual report filed with the SEC. The text of that disclosure from the Kansas City Southern 10-K covering 2007 is as follows:

"KCS faces possible catastrophic loss and liability and its insurance may not be sufficient to cover its damages or damages to others."

"The operation of any railroad carries with it an inherent risk of catastrophe, mechanical failure, collision, and property loss. In the course of KCS' operations, spills or other environmental mishaps, cargo loss or damage, business interruption due to political developments, as well as labor disputes, strikes and adverse weather conditions, could result in a loss of revenues or increased liabilities and costs. Collisions, environmental mishaps, or other accidents can cause serious bodily injury, death, and extensive property damage, particularly when such accidents occur in heavily populated areas. Additionally, KCS' operations may be affected from time to time by natural disasters such as earthquakes, volcanoes, floods, hurricanes or other storms. The occurrence of a major natural disaster could have a material adverse effect on KCS' operations and financial condition. The Company maintains insurance that is consistent with industry practice against the accident-related risks involved in the conduct of its business and business interruption due to natural disaster. However, this insurance is subject to a number of limitations on coverage, depending on the nature of the risk insured against. This insurance may not be sufficient to cover KCS' damages or damages to others and this insurance may not continue to be available at commercially reasonable rates. Even with insurance, if any catastrophic interruption of service occurs, KCS may not be able to restore service without a significant interruption to operations which could have an adverse effect on KCS' financial condition.

"KCS' business may be affected by future acts of terrorism or war."

"Terrorist attacks, such as an attack on the Company's chemical transportation activities, any government response thereto and war or risk of war may adversely affect KCS' results of operations, financial condition, and cash flows. These acts may also impact the Company's ability to raise capital or its future business opportunities. KCS' rail lines and facilities could be direct targets or indirect casualties of acts of terror, which could cause significant business interruption and result in increased costs and liabilities and decreased revenues. In addition, insurance premiums charged for some or all of the terrorism coverage currently maintained by KCS could increase dramatically or certain coverage may not be available in the future."

TIH materials does not come close to covering the potential liability to railroads associated with this traffic. This situation must be corrected.

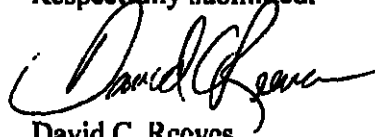
Improving the safety of transporting such materials is one step. In that light, KCSR supports the industry's efforts to establish new standards for tank cars carrying TIH, to cooperate with communities that are developing and evaluating emergency response plans, to train emergency responders, to improve information flow, and to develop special operating rules governing TIH. KCSR also supports efforts to replace TIH materials with safer product substitutes wherever possible. Unless these movements can be completely eliminated, however, the risk of a catastrophic accident remains. Such an accident could be through no fault of the railroad, such as a road vehicle running into the side of a train or a tank car owner's failure to adequately maintain the cars in which it ships hazardous chemicals, yet the railroad is nevertheless exposed to tremendous liability.

There are numerous options to remedy the fundamental problems inherent in forcing railroads to carry TIH while at the same time denying them adequate opportunity to recover the fully-allocated costs of transporting such TIH materials by effectively capping the rates through rate regulation. Some of these options include, but are not limited to, eliminating the common carrier obligation for TIH shipments altogether, adopting special rate reasonableness procedures to account for the increased costs associated with moving TIH, allowing rates to be set without subjecting them to a rate reasonableness proceeding, or requiring TIH shippers to enter into special arrangements, such as indemnification agreements, before a railroad would be required to transport such commodities.

CONCLUSION

KCSR supports the Board's efforts through this hearing to clarify the meaning of the common carrier obligation in today's environment with respect to shipments of hazardous materials

Respectfully submitted.



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